DOCKET FILE COPY ORIGINAL 05-210

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEB SITE: http://commerce.senate.gov
PHONE: (202) 224–5115

MB
other

329

January 27, 2006

Kevin Washington
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Washington:

Enclosed is a letter and report that I received detailing concerns over backlogging of filed complaints. I thought you would want to consider this report as you continue to improve the complaint review process.

With best wishes,

Cordially,

Ted Stevens

TED STEVENS

American Media Services
LLC
DEVELOPERS & BROKERS OF RADIO PROPERTIES

December 7, 2005

The Honorable Ted Stevens
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Stevens,

I am the Chief Executive Officer of American Media Services, LLC, whose home office is located in Charleston, South Carolina. We are the leading provider of broadcast upgrade services to the radio industry. Our business requires us to deal with the Federal Communications Commission on a daily basis. During the last several years, we have seen a marked increase in frivolous filings intended to delay Commission actions for the sole reason of extortion. I would ask that you or your staff review the attached synopsis of our company's business and assist us in reducing the backlog of filings that currently exists at the Commission.

Thank you for your attention to this matter and if you have any questions please do not hesitate to contact me.

Sincerely,

Edward F. Seeger

POST OFFICE BOX 20696 CHARLESTON, SOUTH CAROLINA 29413 TEL (843) 972-2200 FAX (843) 881-4436
E-MAIL: AMS@AMS.FM INTERNET: WWW.AMERICANMEDIASERVICES.COM

Federal Communications Commission Rulemaking
Docket 05-210

Key Concerns

- **Broadcasters are seeking to expand the choices of radio listeners in the largest US markets by building new stations within the existing FM band**
- **These new stations make room for still more new stations in exurban and rural areas, which the FCC sells at auction to raise revenue without increasing taxes. Fees paid by broadcasters also raise revenue.**
- **The FCC staff opposes this on grounds that evaluating the technical proposals is too burdensome, while modern software makes it relatively easy.**
- **The proposed new policy will limit competition in the largest radio markets to only the large incumbent broadcasters, frustrating new entrants, many of whom could reasonably be expected to be minority applicants.**
- **The large incumbent broadcasters are the ones we saw at last year's obscenity hearings. Major market radio needs new blood.**

As part of an omnibus streamlining of FCC FM and AM application procedures, the FCC staff is trying to create a new rule that would virtually eliminate new FM stations in the country's largest markets. In order to make use of wasted spectrum and accommodate as many stations as possible, existing stations can change dial position, tower location, height or power within certain specific limits. By doing so on a cooperative basis, new stations can be created. New stations mean new choices for listeners and advertisers.

Dozens of broadcasters expressed opposition to the Commission's proposed new rule. Virtually the only supporters of this new restriction were the large incumbents. Yet in recent informal meetings, FCC staff seemed convinced they can get the new rule enacted.

The FCC proposes to set an upper limit on the number of individual cooperating broadcasters and stations. This is a brand new proposed restriction, conceived internally at the FCC. As software has made it easier to more efficiently use the FM spectrum, the FCC is seeking to make it harder. This upper limit guarantees that, at least in the most populous markets, there will be no more new FM stations.

The FCC staff's motive is simple. By limiting the complexity of these broadcaster-submitted plans, life will be simpler at the FCC. The FCC hopes listeners and advertisers won't miss what they never had.

American Media Services
LLC

DEVELOPERS & BROKERS OF RADIO PROPERTIES

Supplement to December 7, 2005 Correspondence

POST OFFICE BOX 20696 CHARLESTON, SOUTH CAROLINA 29413 TEL (843) 972-2200 FAX (843) 881-4436
E-MAIL: AMS@AMS.FM INTERNET: WWW.AMERICANMEDIASERVICES.COM

Broadcasters are troubled and perplexed by a proposed new Federal Communications Commission (FCC) rule that will limit competition, frustrate entrepreneurial efforts and job creation, deprive the public of choice and reduce income to the Federal treasury. The rationale for this new rule is nothing more than FCC administrative convenience. In the recent public comment period, an outpouring of broadcasters and broadcast organizations[1] across the political spectrum were heard to complain of this new restriction. None in the Broadcast community asked for this. As Broadcasters, we only want what our listeners want – choices. We believe the FCC should do all in its power to facilitate consumer choice. Certainly the FCC should not enact new rules making it needlessly harder!

Background

Broadcasters, working together, often can find ways to more efficiently use the FM spectrum, making room for more stations on the dial and greatly improving the coverage of existing stations. New entrant stations employ new salespeople, announcers and technicians, thus creating jobs and economic growth. These stations must serve new or underserved audiences in order to attract advertising revenue. Finally, new stations in existing radio markets provide competition, keeping the cost of radio advertising low. This helps grow every kind of business. And the best part is that these new stations are mostly created from spectrum that would otherwise be wasted.

To create these new stations, groups of broadcasters must prepare applications[2] in complete, exacting detail. By adjusting the arrangement of existing stations, changing dial positions or tower locations, radio listeners and advertisers gain new choices. A new enterprise takes shape, hiring and building, largely by unlocking orphaned spectrum. In the wake of such rearrangements, space is usually created for even more new services in outlying areas. These can and will be auctioned, thus bringing more choices to still more listeners and additional revenue to the Federal Treasury.

The FCC's Position

The FCC staff proposes to limit broadcaster FM improvement plans to all but the simplest. Unfortunately, the most complex plans are the ones that are most likely to benefit the largest number of listeners and advertisers. Other regulatory agencies are expected to find efficiencies independently. Broadcasters submit plans that are complete and ready to implement. The FCC staff must only check for accuracy and compliance.[3] This is more like the role of a municipal building department, checking the plans prepared by privately-hired architects, engineers and planners. Nevertheless, the FCC

[1] The First Broadcasting PRM and the associated Rulemaking (Docket 05-210) drew about 100 separate comments. They can be accessed at Docket 05-210.

[2] The term "applications" is used generically, as the most valuable proposals are usually "Petitions to Amend the Table of Allotments, 47 C.F.R §73.202(b)."

[3] In cases where plans conflict, the FCC applies objective numeric population and geographic measures to select the most worthy for approval.

wishes not to have to examine the most complex of plans. The FCC intends to accomplish this by setting an arbitrary upper limit on the number of broadcasters that are allowed to voluntarily cooperate in a plan.

The FCC, to their credit, is seeking to simplify and streamline the processing of the simpler plans. It remains to be seen whether there will be any actual improvements in processing time. But assuming the expected processing efficiencies materialize, it stands to reason that this will free up staff resources for the relatively few more valuable, albeit complex, plans that are submitted for approval. Based on the FCC's past acceptance and processing of such plans, there will be only a handful each year. [For more, see "About FCC Rulemakings" at Tab 1]

The Majority of Broadcasters and Public Commenters:

We broadcasters have no complaint with the rules. Yes, they are complicated – perhaps needlessly so. But the broadcast regulatory process at the FCC protects a public trust which places high expectations on those entrusted with licenses. What is troubling is that we see ways that the same scarce resource – the FM spectrum – has been and can be used to serve ever more needs, yet those plans are on the way to being frustrated.

As with every industry, our engineers have devised more sophisticated methods to maximize the usefulness of the limited FM spectrum. In the same way, cellular telephone engineers find ways to handle more and more calls, petroleum engineers get oil from unproductive wells and cars get ever more miles to the gallon. Broadcast engineers employ the latest software tools to accomplish this goal.

We also recognize that the FCC has difficulty keeping up with new technological advances. Broadcasters, even after expending large sums to develop and document plans for submission, are willing to help the FCC "catch up" with software training and other support. Broadcasters, as a part of the Rulemaking now under consideration, will soon pay substantial new fees for the submission of plans. These fees could, in part, help defray any costs. If the FCC staff needs additional information about any submitted plan, beyond the comprehensive submittals already required, broadcasters would gladly supply it. We are almost never asked. [For more, see "How Software and Consumers Transformed Our Industry" at Tab 2]

Conclusion

As regulated broadcasters, much is expected of us. We are trying to provide the broadest possible range of choices for the greatest number of Americans. To do this, we are reclaiming scattered bits of unused spectrum and, through voluntary cooperative agreement, finding room for more FM stations. Over time, this has become more difficult but modern software tools have filled the gap. Why should the FCC, charged with making radio as accessible and diverse as it can be, stand in the way of such progress simply because the job of vetting and approving our plans is too complicated? Is it good public policy to close the door on new competition where it is needed most?

About FCC FM Rulemakings

Background

The FM band is set up so that stations can co-exist without interfering with each other. That means that WGMS can be on 103.5 along with another FM station in Bethany Beach, Delaware and another in Crozet, Virginia. Well settled rules govern the distances between towers, frequencies, power levels and other relevant technical characteristics.

On a regular basis, in response to listener and advertiser demand, broadcasters propose ways that new FM stations can be created, often by simple modifications of existing stations. Every such proposal that the FCC receives must comply with the rules. The FCC Audio Services Division is the "in box" for such proposals.

What Broadcasters Must Submit

Proposals (referred to as Petitions for Rule Making or PRMs for short) also must detail how every change will affect listeners. Using Census data, the number of additional listeners is quantified. Any areas of new or lost service are mapped and surrounding terrain is profiled. Any towns slated to receive added service are analyzed for demographic and economic worthiness according to standardized criteria. Tower sites are proposed and vetted for suitability. These are comprehensive, detailed plans which propose benefit to the public but are created entirely at private expense.

How the FCC Handles Submissions

Initially, new PRMs are examined for technical flaws. Those few with errors are returned to the proponent. Then, since the FM band is a public trust, any proposed changes are entitled to be examined by all. The relevant documents are made available on the FCC website. The FCC also issues a Public Notice, setting out deadlines for the filing of written comments.

The comment cycle allows those with alternate plans to submit them for comparative consideration on equal footing. Often, competing and mutually exclusive plans are submitted. Most times this is a surprise to the rulemaking participants. Sometimes the engineers can find a resolution but if the two proposals are "either or" the FCC must then choose. The good news is that this is a simple, straightforward, objective process.

Every decision boils down to numbers of new listeners served and whether they are worthy. The FCC has four bright-line criteria well known to the industry. In order of their importance, they are:

1. Does the new station cover individuals that cannot get any radio at all? (there are still a few places in the US where this is true, believe it or not)
2. Does the new station cover individuals that can now get only one station? (again, this is true in a few places)

3. Does the new station plan to serve a city or town that now has no radio station of its own and how many live there?
4. How many new listeners will be served in total?

If part of the plan includes additional stations being moved to new tower sites or otherwise changed, these same criteria are applied. All the effects are added up for each individual proposal. The numbers are compared and the FCC grants the most meritorious.

This is a simplification of the process but not of the criteria. Generally the only subjective decision comes in determining what is really a city or town. There is clear legal precedent defining community criteria and broadcasters follow it.

Timeliness of filing is also paramount. Late-filed generally means rejection for even the most worthy of proposals.

Where It Often Goes Wrong

The FCC staff has perhaps 300 or so not-yet-adjudicated proposals in hand at any given time. If a reasonable period for processing is one year, each week should see 5 or so proposals decided. The pace of adjudication falls far short and backlogs are increasing. So part of the problem is simply not attending to business.

The FCC does not act on PRMs in "first in, first out" order. A proposal may be released for public comment in just a few weeks. Some take much longer. Proposals remain undecided years after all public comment is closed. The selection and order of adjudication is a more opaque process than it should be.

As said earlier, these proposals are technical in nature. So some technical understanding is required to adequately comprehend most proposals. Since these proposals are delivered in excruciating detail with summaries (and sometimes summaries of the summaries) it is difficult to imagine how additional paper might be of help. Instead, it makes sense to brief the staff. This is permitted in other kinds of FCC proceedings under a "permit but disclose" policy but discouraged in FM rulemakings. As a result, the same expertise that developed the plan and successfully explained it to several broadcasters, tower owners and their lawyers, is largely shut out of the FCC. With incomplete understanding and nowhere to turn for help, proposals simply pass from desk to desk.

By FCC rule, competing proposals cannot simply "settle" along mutually agreeable terms. Settlements can only reimburse actual out-of-pocket expenses. Thus, unless there is some belief that FCC processing will happen in a timely matter, there is little incentive for parties to settle. Occasionally, the FCC will allow settlements for amounts greater than expenses. This practice only serves to encourage intransigence. The FCC should either allow such settlements or forbid them.

How Software and Consumers Transformed Our Industry

Background

FM got its real start as a viable commercial medium in the mid-1960s. Before then there were few radios and fewer listeners. Since then, more and more FM stations have been built and FM has become the dominant medium for audio broadcasting in the US. At the end of 1968 there were 2,306 FM stations. At the close of 2004 the FCC counts 8,751 FMs with several hundred more soon to begin operation. FM broadcasting stations have grown in number some 6 times faster than the country's population.

As FM grew more popular, technology improved. Radios are ever smaller and find a place in our lives while we work, relax, exercise, play and even wake us in the morning. Dozens of different kinds of programming choices exist because there are stations to carry them.

Consumers

The Radio Advertising Bureau reports that, on average, Americans listen to radio for three hours a day. Much of this time is spent in the car or at work. As the population grows and commute times increase, time spent listening to radio has increased. Listener totals have also increased. These trends will likely continue since radio's product is free to listeners and provides a diverse array of news, information and entertainment choices.

Migration of individuals from rural to urban areas has been a steady trend for almost a century, as fewer individuals are needed in agriculture and more are needed in manufacturing and service businesses. In addition to general population growth and lengthened commute times, in the larger cities there is yet more growth from in migration. The trends driving increased radio use are inescapable in America's cities.

Additional listeners can support a greater number of stations and make it more likely that narrowly focused formats will succeed. Competing for listeners, stations are under pressure to choose programming that accurately reflects audience desires. If listeners are presented with many choices of stations, only programming diversity can distinguish one station from another. Population growth leads to greater choice, less "homogenization" of radio formats and better service to listeners.

Providing More Choice

Unfortunately, new stations are most needed in exactly the place where spectrum space is extremely scarce. With some 8,800 FM stations now in operation across the country, finding enough spectrum to accommodate new ones is often difficult. In particular, the FM band in the largest radio markets is very crowded. But by carefully rearranging multiple stations it is possible to make room for new entrants.

Most of the work goes into solving the puzzle of how to accommodate all the existing stations – plus new ones – in the same spectrum space. Besides meeting the FCC rules requirements, the plan must be fair and reasonable for all the participants. Remember, these are broadcasters that must be voluntarily enlisted to cooperate. These broadcasters have existing audiences to serve and depend upon advertising revenue to cover the costs. Gathering in and manipulating the spectrum to assemble enough to build an entirely new station can easily involve 8 or 10 other broadcasters in a plan that stretches across multiple states. This is because any changes to any stations anywhere must meet the FCC's required distance, power and coverage requirements while not interfering with any other stations. The good news is that this puzzle solving is done completely at broadcaster expense before plans are ever submitted to the FCC.

In rural areas, this process is much easier. Indeed, most times urban rearrangements give rise to natural slots where new exurban or rural stations can be built. Complexity is almost never an issue outside America's cities.

Software

Specialized software, databases, radar terrain modeling, mapping software, Census data and a host of other information is converted to bits and bytes, allowing computers to perform the repetitive tasks necessary to determine if a particular rearrangement solution will work. Before high speed personal computers it simply wasn't possible to analyze more than a station or two at a time. This set a natural limit on complexity. It also set a limit on spectrum efficiency. Only the largest and most obvious opportunities were discovered, letting a vast resource of public spectrum go to waste.

Conclusion

If we are to have new FM stations in the most populous places, we will need to make careful use of the limited spectrum allotted for broadcast FM. Just as cellular has found a way to carry more calls in the same channel space, so must we try to offer as many listener choices as possible in the FM band. This goal, and the research and development to achieve it, will be provided by the broadcast community at broadcaster expense. Broadcasters need for the FCC to accept these proposals and to grant them where technically and legally possible. In turn, if the FCC needs software tools such as are used in the private sector, broadcasters will help to provide whatever is necessary.